

STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Vermont Gas Systems, Inc.,)	
for a certificate of public good,)	
pursuant to 30 V.S.A. § 248 ,)	
authorizing the construction of the)	
“Addison Natural Gas Project”)	Docket No. 7970
consisting of approximately 43 miles)	
of new natural gas transmission)	
pipeline in Chittenden and Addison)	
Counties, approximately 5 miles of		
new distribution mainlines in Addison		
County, together with three new gate		
stations in Williston, New Haven and		
Middlebury, Vermont		

REQUEST FOR AN ORDER TO SHOW CAUSE AND INVESTIGATION

INTRODUCTION

Ms. Lyons, joined by the seven intervenors in Docket 8643, asks that the Board issue an order to show cause and open an investigation into whether Vermont Gas Systems, Inc. (“VGS”), by continuing to engage in construction after learning that it lacks a necessary wetland permit and without obtaining a threatened species “takings” permit, has committed violations of and is continuing to violate Condition 3 of the Board’s final order, issued on December 23, 2013, in this matter. The Board has authority to grant the requested relief under 30 V.S.A. § 30 and its inherent authority to hold a regulated-utility party in contempt.

FACTUAL ALLEGATIONS

A. In the proceedings which culminated in the issuance of a Certificate of Public Good on December 23, 2013, the Agency of Natural Resources requested a condition of approval that no construction occur under any ANR permit until all permits had been obtained. The Board agreed. In paragraph 2 of its final order, the Board approved of

the route proposed by VGS – including the route through Geprags Park in Hinesburg.

In paragraph 3, the Board adopted the language sought by ANR:

2. Construction of the proposed Project shall be in accordance with plans and evidence as submitted in this proceeding. Any material deviation from these plans or a substantial change to the Project must be approved by the Board. Failure to obtain advance approval from the Board for a material deviation from the approved plans or a substantial change to the Project may result in the assessment of a penalty pursuant to 30 V.S.A. §§ 30 and 247

3. The Petitioner shall obtain all necessary permits from the Agency of Natural Resources, the U.S. Army Corps of Engineers, and the Vermont Agency of Transportation before commencement of construction or site preparation. This includes the Vermont Stream Alteration Permit, Vermont Wetland Permit, Section 401 Water Quality Certification, NPDES Stormwater Permit, and Army Corps of Engineers Section 404 Permit. Prior to proceeding with construction in any given area, the Petitioner shall also obtain all other necessary permits and approvals required for the proposed construction activities in that area. Construction, operation and maintenance of the proposed Project shall be in accordance with such permits and approvals, and with all other applicable regulations, including those of the Vermont Agency of Natural Resources and the U.S. Army Corps of Engineers.

- B. VGS learned on June 17, 2016 that the plans it had submitted to the Board, for passage through Geprags Park in Hinesburg, require installation of the pipeline in wetlands for which VGS has obtained no permit from ANR. This occurred because of erroneous *mapping* of the wetlands on the site. See Moulaert memorandum attached.
- C. VGS also learned on June 17, 2016 that it had erroneously *evaluated* the wetlands which the project would affect. See Moulaert memorandum. The proposed route will impact wetlands that provide high wetlands values.
- D. The erroneous mapping and evaluation mean that the route submitted to the Board unnecessarily harms significant, undisturbed wetlands – as opposed to another possible route which would use wetlands further east of less value.

- E. Because one of the purposes of ANR wetlands review is to require adoption of the least harmful means of accomplishing a project, the two errors resulted in both a wetlands permit that failed to provide permission for parts of the actual route and in a wetlands permit that was based on materially false information.
- F. VGS knew both facts by the close of business on June 17, 2016. Its consultant, VHB, certainly would not have delayed transmission of this information to VGS.
- G. VGS took no steps to notify the Board or the parties.
- H. VGS continued construction.
- I. On June 30, 2016, counsel for the intervenors in Docket 8643, and for Ms. Lyons, provided Ms. Moulaert's memorandum to ANR and to VGS, with a copy of the attached cover letter.
- J. VGS continued to construct the pipeline without notice to the Board or the parties that it lacked a permit necessary for the pipeline route which the Board had approved of.
- K. On July 2, 2016, counsel emailed a letter to VGS and to all of the parties in Dockets 7970 and 8643 demanding cessation of construction. The letter is attached.
- L. On July 3, 2016, VGS replied through counsel that unless and until ANR notifies VGS that it is in violation, it will continue construction. That reply is attached. It falsely states that it has obtained all permits necessary for the project – the project, as submitted to and approved by the Board under paragraph 2, above, passes through Geprags Park wetlands for which no ANR permit has been sought or obtained as required by paragraph 3. No substantial change application for a different route has been sought from or obtained from the Board, and no wetlands permit for the approved route has been sought or obtained from ANR.

- M. On information and belief, the project as presently planned has already “taken” or will “take” threatened species in or near the wetlands in Hinesburg, as that term is defined by 10 V.S.A. § 5401.
- N. A permit for the taking is required from ANR pursuant to 10 V.S.A. § 5408.
- O. The § 5408 takings permit is one of the permits required to be obtained prior to construction under paragraph 3.
- P. No such permit has been obtained.

LAW TO APPLY

Section 30 of Title 30 authorizes the Board to impose penalties for any violation of its orders. The Board’s inherent contempt authority provides it with the authority to compel compliance with its orders and to impose sanctions for past and ongoing violations of its orders. Sanctions for past violations constitute criminal contempt; ongoing violations may constitute civil contempt. See, *e.g.*, In re General Order No. 45 Notice by Vermont Yankee, Docket No. 6545, Order issued October 8, 2002.

The Board has already imposed a \$100,000 penalty on VGS for its delay in reporting to the Board and the parties in Docket 7970 a significant cost increase. The Board held that “trust and transparency are essential for effective regulation.” The Board rejected VGS’s claim that it had needed time to evaluate the significance or extent of the cost increases. Docket No.8328, Order of July 31, 2015.

In Docket 8328, VGS had at least an arguable defense that “significant” was not defined in the rule governing cost increases, and that it was evaluating the significance of the cost increase – but here, in contrast, the obligation imposed on the company by the Board’s order was black-and-white. Unless all ANR permits for *all* aspects of the project have been obtained, there shall

be no construction on *any* part of the project. The Board's order contained no gray area. It was incumbent upon VGS to immediately halt construction once it learned that a needed permit was lacking.

VGS had the choice of applying for a substantial change approval from this Board in order to avoid any unpermitted wetlands use in the Park, or to obtain an amended permit from ANR for the route already approved of by the Board. Pending the grant of either application, its duty was to cease construction. By accepting the CPG without appeal, it had agreed to abide by Condition 3, which prohibited construction until all ANR permits were in hand. Once it learned it lacked all permits necessary for the approved route, it had no discretion to violate the Board order while it was deciding which change to seek.

Instead of complying with the Board order, VGS has rushed ahead to complete construction without even notifying the Board or the parties.

In addition, it now appears that no takings permit has been obtained under § 5408. None of the construction, from Williston to Middlebury, was authorized by the Board's order in the absence of that permit.

Ms. Lyons, Mr. Marks and the other intervenors ask that the Board immediately issue an order that VGS show cause why construction should not cease and why it should not be held in contempt for its past and ongoing violations, that the Board conduct an investigation of this matter and that the Board impose appropriate sanctions,

Dated at Bristol, Vermont, this 8th day of July, 2016.

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